IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 691 OF 2004

ASHOK PANDHARINATH RAKSHE)
Age: 42 years, Occ: Service,)
residing at "Shramasafalya",)
First floor, infront of Golden Park,)
Tanaji Nagar, Kalyan (East),)
Taluka Kalyan, District Thane.)..Appellant
(org.Petitioner)

Versus

SUBHADRA ASHOK RAKSHE,)
Age: 37 years, Occu: Household,)
residing at C/o Bhikubai Vithoba)
Waghchoure, Post - Vithe,)
Taluka-Akola, District Ahmednagar.)..Respondent
(Org. Respondent)

Smt. V.S. Gole for the Appellant.

CORAM: D.G.DESHPANDE,J.

DATE : 29th September,2005.

ORAL JUDGMENT:

1. This Appeal was admitted and notice was issued

to the Respondent for final hearing of the Appeal. Nobody is appearing for the Respondent since long. I have heard the matter earlier. It was adjourned and kept today. Even today nobody has appeared for the Respondent.

2. The appellant-husband filed a petition for divorce against the respondent-wife on the ground of cruelty and desertion. That petition was allowed by the trial Court. The wife challenged that order in the District Court. The appellate Court set aside the order of the trial Court and, therefore, this Second appeal.

3. The substantial question of law that is involved in this case is whether looking to the fact that the parties who were married on 12th May, 1982 have been residing separately from 1985 onwards till the date of filing of the Appeal by the respondent before the District Court.There is nothing on record to show that the respondent has ever attempted for reconciliatiion and also looking to the fact that the respondent was filing petition after petiton for maintenance, whether this was not a fit case to grant decree of divorce to the husband as the case being an irritriavable breaking of marriage.

4. Therefore, on the aforesaid question, I have heard the learned Advocate for the appellant. She pointed out that the parties were married on 12th May, 1982. In July, 1985, the wife left the company of the husand. Therefore, in 1985 the petition for divorce came to be filed. She further pointed out that there is no issue to the marriage and it is one of the contentions of the appellant the respondent has also undergone abortion against the advice and desire of the husband. Thereafter, the respondent filed a petition for maintenance under Section 125 of Cr.P.C. She was awarded maintenance at Rs.150/- per month. She also filed an application for maintenance in the divoce proceedings. Her application was rejected. On her own admission, the wife filed an appeal against the order and the appellate Court has granted maintenance of Rs.850/- per month. Thereafter the wife also filed Regular Civil Suit for maintenance. When the interim claim applicatiion for maintenance No.86 of 2002 was rejected, she filed Writ Petition against the order and in the Writ Petition, maintenance was awarded.

5. The Counsel for the appellant contended that the only intention of the wife is to extract money. So far the husband has paid more than Rs.1 lakh to the wife towards maintenance. Not a single attempt

during all this period of 20 years is made by the wife for reconciliation nor for restitution. however, the lower appellate Court blamed the husband for not filing any petition for restitutiion of conjugal rihts.

6. It may be that simply filing a petition for maintenance under Section 125 of Cr.P.C. may not amount to cruelty. But from the consistent conduct of the wife-respondent it can be deduced that she is only interested in extracting money from the husband in the form of maintenance and she goes on filing application after application and also Regular Civil Suit without making an attempt for reconciliation. The parties are living separately for the last 20 years and the trial Court has, after appreciating the evidence and notings of the demeanour of the wife has granted decree on coming to the conclusion that it was the wife who was responsible for desertion.

7. The lower appellate Court did not care to find out as to who was responsible for desertion because that was the crucial point in the case. If the trial Court has come to the conclusion that it was the wife who was responsible for desertion and who was not justified in deserting the husband, and when the law provides and gives right to the husband to claim

decree on the ground of desertion, then the lower appellate Court should have, before setting aside the

decree of the trial Court, considered all those aspects seriously.

8. My attention was drawn by the learned Advocate for the appellant to several judgments and authorities, the most important of which is in the case of **A.Jayachandra vs. Aneel Kaurreported in All India Hindu Law Reporter 2005(1) HLR** wherein after considering al the circumstances appearing on record, the Court found that when the respondent-wife gave priority to her profession over her husband’s freedom it points unerringly at disharmony, diffusiion and disintegration of material unity from which the Court can deduce about irretrievable breaking of marriage. there is another Judgment of the Divisoin Bench of this Court in the case of **Mrs. Meena Dinesh Parmar v. Dinesh Hastimal Parmar reported in AIR 2005 Bombay 298**, where the Court after recording that wifer wnet to her maternal uncle even without peremission of her father this amounted to cruelty. Similarly , there is a judgment of the Supreme Court in the case of **Smt. Swati verma vs. Rajan Verma, reportede in AIR 2004 SC 161** on the same point.

9. It is, therefore, clear that the Supreme Court and this Court in the aforesaid Judgments considered the aspects of the matter i.e. iretrievable breaking of marital relationshbip as a ground for granting divorce. Regareding cruelty and desertion the trial Court framed the following issues :-

"(1) Does petitoner prove that, respondent treated him with cruelty as alleged ?

(2) Does petitioner prove that, respondent has deserted him for a continuous period of not less than two years immediately preceding presentation of petition ?"

The wife has alleged that her father-in-law used to see her by suspicion and that was without reasons. In para 35 of the Judgment of the trial Court, the court positively came to the conclusion that the parties were residing separately since 1985. The marriage was dead and practically the wife is not performing her marital obligations to reach her husand’s place to perform her marital dutis. The husband has sent many letters to wife calling upon her to return to matrimonial home, but the wife is not

interested. She has neglected her husband on all counts. The couple was young and thereore considering the positive facts, the trial Court granted the decree.

10. The appellate Court has not considered all these important aspects and, therefore, relying upon the aforesaid judgments, I pass the following order :-

. The Appeal is allowed.
The order of the appellate Court is set aside and that of the trial Court is upheld.
No order as to costs.

(D.G.DESHPANDE,J.)